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1 brought to CCDC, where he told a nurse that he needed to see an orthopedic surgeon.<sup>5</sup> At the  
2 time, NaphCare was responsible for medical services at CCDC.<sup>6</sup> The next day, a nurse  
3 practitioner examined Kinsman's arm, determined that his wrist was fractured, and treated the  
4 pain with ibuprofen.<sup>7</sup> He also prescribed Robaxin for Kinsman's shoulder and neck pain.<sup>8</sup> That  
5 same day, a NaphCare employee faxed UMC to request Kinsman's records and discharge  
6 summary.<sup>9</sup>

7 Kinsman was examined by a physician's assistant (PA) for arm pain the next day. The  
8 PA continued Kinsman's medications and sent him the medical-observation unit. He noted that  
9 he needed the UMC records and planned a "likely future referral to ortho."<sup>10</sup> Three days later,  
10 UMC sent Kinsman's medical records, but did not include the discharge-summary report  
11 reflecting Kinsman's need to see an orthopedic surgeon.<sup>11</sup>

12 On January 21, 2015, Kinsman saw Dr. Mondora for a follow-up on his arm. Dr.  
13 Mondora prescribed Tylenol #3 for pain.<sup>12</sup> Later that day, a NaphCare employee faxed UMC  
14 again, asking for Kinsman's discharge summary.<sup>13</sup> Two days later, UMC sent the same medical  
15 records it had sent previously, again with no discharge summary.<sup>14</sup> Kinsman was released from  
16 CCDC on January 30, 2015.

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19 <sup>5</sup> *Id.* at 25; 46–50.

20 <sup>6</sup> *See id.* at 53–116 (NaphCare contract).

21 <sup>7</sup> *Id.* at 45.

22 <sup>8</sup> *Id.* at 44.

23 <sup>9</sup> *Id.* at 35.

24 <sup>10</sup> *Id.* at 43.

25 <sup>11</sup> *Id.* at 34–40.

26 <sup>12</sup> *Id.* at 42.

27 <sup>13</sup> *Id.* at 33.

28 <sup>14</sup> *See id.* at 32.

1 In December 2016, Kinsman filed this complaint alleging that Metro, CCDC, and  
2 NaphCare are liable under state law and § 1983 for their failure to provide proper medical care  
3 during his few weeks at CCDC. By March 2017, the claims against NaphCare and CCDC were  
4 dismissed under Local Rule 7-2(d) because Kinsman failed to oppose their motions to dismiss.  
5 Last-standing defendant Metro now moves for summary judgment on the claims against it.  
6 Because Kinsman cannot show a genuine dispute of material fact on any of his claims, I grant  
7 judgment in Metro's favor.

### 8 Discussion

9 Summary judgment is appropriate when the pleadings and admissible evidence “show  
10 there is no genuine issue as to any material fact and that the movant is entitled to judgment as a  
11 matter of law.”<sup>1</sup> When considering summary judgment, the court views all facts and draws all  
12 inferences in the light most favorable to the nonmoving party.<sup>15</sup> If reasonable minds could differ  
13 on material facts, summary judgment is inappropriate because its purpose is to avoid unnecessary  
14 trials when the facts are undisputed, and the case must then proceed to the trier of fact.<sup>16</sup>

15 If the moving party satisfies Rule 56 by demonstrating the absence of any genuine issue  
16 of material fact, the burden shifts to the party resisting summary judgment to “set forth specific  
17 facts showing that there is a genuine issue for trial.”<sup>17</sup> The nonmoving party “must do more than  
18 simply show that there is some metaphysical doubt as to the material facts”; he “must produce  
19 specific evidence, through affidavits or admissible discovery material, to show that” there is a  
20 sufficient evidentiary basis on which a reasonable fact finder could find in his favor.<sup>18</sup>

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23 <sup>1</sup> See *Celotex Corp. v. Catrett*, 477 U.S. 317, 330 (1986) (citing Fed. R. Civ. P. 56(c)).

24 <sup>15</sup> *Kaiser Cement Corp. v. Fishbach & Moore, Inc.*, 793 F.2d 1100, 1103 (9th Cir. 1986).

25 <sup>16</sup> *Warren v. City of Carlsbad*, 58 F.3d 439, 441 (9th Cir. 1995); see also *Nw. Motorcycle Ass'n v. U.S. Dep't of Agric.*, 18 F.3d 1468, 1471 (9th Cir. 1994).

26 <sup>17</sup> *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986); *Celotex*, 477 U.S. at 323.

27 <sup>18</sup> *Bank of Am. v. Orr*, 285 F.3d 764, 783 (9th Cir. 2002) (internal citations omitted); *Bhan v.*  
28 *NME Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991); *Anderson*, 477 U.S. at 248–49.

1 **A. Deliberate indifference**

2 A prisoner who claims inadequate medical care must show that prison officials were  
3 deliberately indifferent to his serious medical needs.<sup>19</sup> A plaintiff can prevail on a deliberate-  
4 indifference claim if he can show that prison officials denied, delayed, or intentionally interfered  
5 with medical treatment and that the delay or interference caused further injury.<sup>20</sup> Indifference to  
6 a prisoner's medical needs must be substantial; mere indifference, negligence, medical  
7 malpractice, or even gross negligence are insufficient to establish deliberate indifference.<sup>21</sup> A  
8 mere difference of medical opinion likewise does not suffice.<sup>22</sup> A prisoner must instead show  
9 that the course of treatment chosen was medically unacceptable under the circumstances and  
10 taken in conscious disregard to his health.<sup>23</sup>

11 There is no *respondeat superior* liability for § 1983 claims; a municipal entity is only  
12 liable if the plaintiff shows that the execution of a municipal policy caused the constitutional  
13 injury.<sup>24</sup> To impose liability against a municipality for its failure to act, a plaintiff must show  
14 that: (1) a municipal employee violated the plaintiff's constitutional rights; (2) the municipality  
15 has customs or policies that amount to deliberate indifference; (3) these customs or policies  
16 caused the employee's violation of the plaintiff's constitutional rights.<sup>25</sup>

17 Kinsman does not name any individual defendants in this action. He does not show that a  
18 Metro employee violated his constitutional rights. There is no evidence that the doctors and  
19 nurses who treated Kinsman, or the Metro officer who accompanied him to UMC, were  
20 deliberately indifferent to his medical needs. The record shows that Kinsman was evaluated and

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21 <sup>19</sup> *Estelle v. Gamble*, 429 U.S. 97, 104 (1976).

22 <sup>20</sup> *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006).

23 <sup>21</sup> *Conn v. City of Reno*, 591 F.3d 1081–82 (9th Cir. 2009).

24 <sup>22</sup> *See Franklin v. State of Or., State Welfare Div.*, 662 F.2d 1337, 1344 (9th Cir. 1981).

25 <sup>23</sup> *See Toguchi v. Chung*, 291 F.3d 1051, 1058 (9th Cir. 2004).

26 <sup>24</sup> *Long v. Cty of Los Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006).

27 <sup>25</sup> *Gibson v. Cty of Washoe*, 290 F.3d 1175, 1193–94 (9th Cir. 2002), *cert denied*, 537 U.S. 1106  
28 (2003).

1 treated for his injuries multiple times during his brief incarceration. Any individual's alleged  
2 failure to refer Kinsman to an orthopedic surgeon, when they had no medical records indicating  
3 that such a referral was medically necessary, does not demonstrate deliberate indifference.

4 Kinsman alleges that Metro, as an entity, was deliberately indifferent to his serious  
5 medical needs. But the only way a municipal department can be held liable for deliberate  
6 indifference under § 1983 is if it had a custom, policy, or practice that caused the deprivation of  
7 Kinsman's rights. Kinsman presents absolutely no evidence that any such policy or custom  
8 exists. So, I grant summary judgment in Metro's favor on Kinsman's deliberate-indifference  
9 claim.

#### 10 **B. IIED and NIED**

11 Under Nevada law, the elements of a cause of action for IIED are "(1) extreme and  
12 outrageous conduct with either the intention of, or reckless disregard for, causing emotional  
13 distress, (2) the plaintiff's having suffered severe or extreme emotional distress, and (3) actual or  
14 proximate causation."<sup>26</sup> Extreme and outrageous conduct is conduct "outside all possible bounds  
15 of decency and [that] is regarded as utterly intolerable in a civilized community."<sup>27</sup> To establish  
16 severe emotional distress, the plaintiff must present "objectively verifiable indicia of the severity  
17 of his emotional distress."<sup>28</sup> General physical or emotional discomfort is insufficient to  
18 demonstrate severe emotional distress.<sup>29</sup> NIED requires "either a physical impact must have  
19 occurred or, in the absence of physical impact, proof of 'serious emotion distress' causing  
20 physical injury or illness. . . ."<sup>30</sup>

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22 <sup>26</sup> *Dillard Dept. Stores v. Beckwith*, 989 P.2d 882, 886 (Nev. 1999) (citing *Star v. Rabello*, 625  
23 P.2d 90, 92 (Nev. 1981)).

24 <sup>27</sup> *Maduike v. Agency Rent-A-Car*, 953 P.2d 24, 26 (Nev. 1998).

25 <sup>28</sup> *Miller v. Jones*, 970 P.2d 571, 577 (Nev. 1998).

26 <sup>29</sup> *Burns v. Meyer*, 175 F. Supp. 2d 1259, 1268 (D. Nev. 2001) (citing *Chowdhry v. NLVH Inc.*,  
851 P.2d 459, 462 (Nev. 1993)).

27 <sup>30</sup> *Olivero v. Lowe*, 995 P.2 1023, 1025 (Nev. 2000) (quoting *Barnettler v. Reno Air, Inc.*, 956  
28 P.2d 1382, 1386–87 (Nev. 1998)).

1 Kinsman fails to present evidence to support any of these elements. There is no evidence  
2 that Metro engaged in extreme and outrageous conduct. After Kinsman was transported to  
3 CCDC, he was promptly evaluated by a nurse and in the next few days was examined by a  
4 physician's assistant and a doctor. While Kinsman told CCDC medical staff that he was directed  
5 to see an orthopedic surgeon, they were unable to confirm his account because UMC did not  
6 send them Kinsman's discharge summary.

7 Kinsman also cannot show that he suffered severe or extreme emotional distress. In a  
8 response to an interrogatory request asking him to identify the emotional damages he sustained  
9 from his experience, he responded that it is "frustrating" to have limited use of his wrist and the  
10 "pain and discomfort" he experiences "causes some depression."<sup>31</sup> He also states that while he  
11 was at CCDC, he was "constantly worried" that the delayed treatment of his wrist would cause  
12 permanent injury.<sup>32</sup> These expressions of discomfort and frustration are not sufficiently severe  
13 to support an IIED or NIED claim, and Kinsman presents no additional evidence to demonstrate  
14 the severity of his emotional distress.

15 Finally, Kinsman cannot show that Metro caused his emotional distress. NaphCare was  
16 responsible for providing medical care to inmates. There is no evidence to show that Metro was  
17 responsible for determining what type of follow-up care an inmate receives or that it had  
18 anything whatsoever to do with Kinsman's medical treatment. In short, nothing meaningfully  
19 ties Metro to Kinsman's care while at CCDC. So, I grant judgment in Metro's favor on  
20 Kinsman's IIED and NIED claims.

21 **C. Negligence and negligent training**

22 "To prevail on a negligence theory, a plaintiff must generally show that: (1) the defendant  
23 owed a duty of care to the plaintiff; (2) the defendant breached that duty; (3) the breach was the  
24 legal cause of the plaintiff's injury; and (4) the plaintiff suffered damages."<sup>33</sup> An employer "has

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25 <sup>31</sup> ECF No. 29-2 at 108.

26 <sup>32</sup> *Id.*

27 <sup>33</sup> *Scialabba v. Brandise Const. Co.*, 921 P.2d 928, 930 (Nev. 1996).


1 a duty to use reasonable care in the training, supervision, and retention of his or her employees to  
2 make sure that the employees are fit for their positions.”<sup>34</sup>

3 Kinsman doesn’t present any evidence to show that Metro owed him a duty to provide  
4 specific medical care. Because I find that Kinsman lacks evidence to show that Metro was  
5 deliberately indifferent to a risk to his serious medical needs, Kinsman cannot show that Metro  
6 breached a constitutionally-imposed duty. Kinsman does not identify any other duty breached by  
7 Metro and on which he bases his negligence claim, other than stating—without support—that  
8 Metro “had a duty to render adequate medical care.” Assuming that there is a separate duty  
9 under Nevada law, Kinsman does not provide any evidence to show that Metro breached it for  
10 the same reasons discussed above. The record is also devoid of any evidence to support  
11 Kinsman’s claim of negligent hiring, training, and supervision. There is no evidence that Metro  
12 employees were involved in Kinsman’s medical care, let alone that Metro negligently hired,  
13 trained, or supervised those employees. So, I grant summary judgment in Metro’s favor on  
14 Kinsman’s negligence and negligent-training claims.

### 15 Conclusion

16 Accordingly, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Las  
17 Vegas Metropolitan Police Department’s motion for summary judgment [ECF No. 29] is  
18 **GRANTED.** The **Clerk of Court** is directed to **ENTER JUDGMENT in the defendants’**  
19 **favor and CLOSE THIS CASE.**

20 Dated: March 15, 2018

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22 U.S. District Judge Jennifer A. Dorsey  
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28 <sup>34</sup> *Hall v. SSF, Inc.*, 930 P.2d 94, 99 (Nev. 1996).